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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 1658 of 2004

PETITIONER : Govind Warkade

VERSUS

RESPONDENTS : State of Chhattisgarh & Others.

Post for order on 23rd April, 2007

Sd/-
Satish K. Agnihotri
Judge

(106)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE JUSTICE SHRI SATISH K. AGNIHOTRI

WRIT PETITION No. 1658 of 2004

PETITIONER : Govind Warkade S/o Late Chatar Singh, Aged about 49 years, Assistant Sub Inspector, R/o Kotwali, Rajnandgaon, District – Rajnandgaon (C.G.)

VERSUS

RESPONDENTS : 1) State of Chhattisgarh Through the Secretaryt, Home Department, DKS Bhawan, Raipur (CG)

2) The Director General of Police, State of Chhattisgarh, Police Head Quarter, Raipur.

3) The Inspector General of Police, Raipur Range, Raipur (CG)

4) The Superintendent of Police, Rajnandgaon, Distt. Rajnandgaon

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

Present: Shri P.Diwakar, Sr. Advocate with Shri Adil Minhaz, Advocate for the petitioner.
Shri V.V.S.Moorthy, Deputy Advocate General with Miss Deepali Pandey, Panel Lawyer for the State / respondents.

ORDER

(Passed on 23rd day of April, 2007)

1. The petitioner has challenged the legality and validity of the order dated 17.03.2004 (Annexure P/8) passed by the Director General of Police and order dated 8.11.2004 (Annexure P/4) passed by the Superintendent of Police, Rajnandgaon, whereunder the petitioner was punished with by withholding increment with cumulative effect having effect on the pension of the petitioner and the suspension period was treated as suspension only.

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2. The indisputable facts, in nutshell, are that the petitioner working as Assistant Sub Inspector at Kotwali, Rajnandgaon was served with a charge-sheet dated 24.06.2001 (Annexure P/1) by the Superintendent of Police, Rajnandgaon, to the effect that the petitioner was ordered to work in the Naxalite affected Police Station, Aundhi. The petitioner, the delinquent employee, did not carry out the said order. Thus, it is a grave misconduct. Reply was filed. Enquiry Officer was appointed. The Sub Divisional Officer (Police), Ambagarh Chowki, after having considered and having examined the documents and witnesses adduced by the prosecution as well as by the delinquent employee, held that the charge to the effect that he had not joined the police Chowki, Aundhi, in Naxalite affected area and has shown his cowardliness, is not found proved, as the petitioner had joined the post and performed the duties as assigned to him. Pursuant to the findings of the enquiry report dated 31.12.2001, the petitioner vide his representation dated 12.01.2002 (Annexure P/3), requested the Superintendent of Police, respondent no. 4, to exonerate him from the charges levelled against him.

3. The respondent no. 4, vide letter dated 18.02.2002, reminded the petitioner to submit his reply as the time granted earlier vide order dated 31.01.2002 was over and he had not filed the reply and thereafter three more days was granted to him. The respondent no. 4 after having considered the reasons given by the enquiry officer and the reply submitted by the petitioner, came to the conclusion that the alleged charge against the petitioner was found proved and imposed a punishment of withholding increment with cummulative effect vide order dated 28.02.2002 (Annexure P /4). In appeal, the Inspector General of Police, respondent no. 3, vide order dated 26.7.2002 allowed the appeal partly and directed to enter "Censure" remark in the service book (Annexure P/5).

4. Being aggrieved and dissatisfied with the said order, the petitioner moved an appeal before the Director General of Police, respondent no. 2. The Director General of Police, vide order dated 22.11.2002 (Annexure P/7) rejected the appeal and confirmed the order passed by

the Inspector General of Police. Thereafter, the respondent no. 2 took up the matter again suo-moto and without issuing any notice, as required, to the petitioner, and set aside the order passed by the respondent no. 3 and maintained the order passed by the respondent no. 4 to the effect that the increment with cumulative effect was withheld. Hence this petition.

5. Shri P.Diwakar, Sr. Advocate with Shri Adil Minhaz, learned counsel appearing for the petitioner, questions the validity of the order dated 17.03.204 on the ground that the respondent no. 2 has no jurisdiction to take up the matter in suo-moto revision which has already attained finality by the order passed by the respondent no. 2 under Regulation 270 of the M.P. Police Regulations. Secondly, before reviewing the order dated 22.11.2002 (Annexure P/7) the petitioner ought to have been afforded an opportunity of hearing. The respondent no. 2, without issuing notice to show cause reviewed his earlier order dated 22.11.2002 and set aside the earlier order by dismissing the appeal and confirmed the order dated 28.02.2002 passed by the respondent no. 4 imposing punishment of withholding of increment with cumulative effect having effect on the pension of the petitioner and the suspension period was treated as suspension only, vide order dated 17.03.2004 (Annexure P/8).

6. Learned counsel further submits that on account of the wrong order passed by the respondent no. 2, the petitioner has suffered consequential benefits of promotion and salary which became due. Learned counsel further submits that the imposition of "censure" is a minor penalty and it does not come in the way of promotion but stoppage of increment with cumulative effect is a major penalty which comes in the way of further promotions and grant of other benefits.

7. It was next contended that the disciplinary authority, without holding an enquiry cannot impose the punishment as the enquiry officer has exonerated the petitioner completely from the charge levelled against him. On that ground also, the punishment imposed by the disciplinary

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authority and confirmed by the respondent no. 2 vide order dated 17.03.2004 (Annexure P/8) is bad and vitiated.

8. Per contra, Shri Moorthy, learned Deputy Advocate General with Miss Deepali Pandey, Panel Lawyer for the State/respondents, would submit that the order passed by the Superintendent of Police, Rajnandgaon is perfectly legal and valid as the same order was passed after affording opportunity of hearing to the petitioner. The Director General of Police, being the head of the Police Department has right to take up any case for revision and pass appropriate order.

9. I have heard the learned counsel for the parties, perused the pleadings and documents appended thereto. On perusal of the documents, it is evident that the respondent no. 4, disciplinary authority, has given proper notice of hearing while disagreeing with the findings of the enquiry officer. The requirement of affording of an opportunity of hearing is met, when the petitioner was given notice and the petitioner has filed his reply. It is clear from the reply dated 12.01.2002, pursuant to the memo dated 5.1.2005 (Annexure P/3), submitted by the petitioner and subsequently letter dated 18.02.2002 issued by the respondent no. 4 to the petitioner to submit the reply within a period of three days as 7 days time granted earlier was over and in the final order dated 28.02.2002 (Annexure P/4) it is clearly stated that the respondent no. 4 has considered reply of the petitioner before passing the order. Thus, the contention of the petitioner that no opportunity of hearing was afforded before passing the order while disagreeing with the enquiring authority is factually incorrect.

10. The Hon'ble Supreme Court, in the case of Punjab National Bank v. Kunj Behari Misra (1998) 7 SCC 84, while considering an identical question as to "when the enquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved then can the disciplinary authority differ from that and give a contrary finding without affording any opportunity to the delinquent officer" held as under:

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> "**17.** These observations are clearly in tune with the observations in *Bimal Kumar Pandit case* quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per *Karunakar case* the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

11. Subsequently, in the matter of Yoginath D. Bagde Vs. State of Maharashtra, (1999) 7 SCC 739, the Hon'ble Supreme Court held as under:

> "**28**.....if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of

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giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded. "

12. Further, in the matter of J.N.Naiksatam v. Prothonotary & Senior Master, (2004) 8 SCC, the Hon'ble Supreme Court held that:

> "Even though the rule as such does not contemplate giving an opportunity to the appellant delinquents before the disciplinary authority takes a final decision to disagree with the reasons given by the enquiry officer, such a provision could be read into the rule but even then the appellants cannot be heard to say that there shall be a personal hearing by the disciplinary authority. In the instant case, the appellants were given a copy of the tentative decision of the disciplinary authority and the appellants furnished detailed explanation and we are of the view that the principles of natural justice have been fully complied with and we do not find any infraction of rules or infirmity in the said decision."

13. In the matter of Ranjit Singh V. Union of India, (2006) 4 SCC 153, the Hon'ble Supreme Court held that :

> **"22**.....it is now well settled that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. The enquiry officer arrived at findings which were in favour of the appellant. Such findings were required (*sic* sought) to be overturned by the disciplinary authority. It is in that view of the matter, the power sought to be exercised by the

disciplinary authority, although not as that of an Appellate Authority, but is akin thereto. The inquiry report was in favour of the appellant but the disciplinary authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in the absence of any show-cause filed by the appellant, to analyse the materials on record afresh."

14. Applying the above settled principles of law to the present facts of the case, the delinquent employee was given show cause notice and as such opportunity of hearing was afforded to him and the petitioner submitted his reply also. Final order was passed by the disciplinary authority after considering the materials available in the enquiry report and the reply filed by the petitioner, while coming to the conclusion that the petitioner was held guilty of the charge levelled against him.

15. With regard to the second contention as to whether the Director General of Police, in exercise of its power under Regulation 270, can review his own order without affording an opportunity of hearing.

> **"M.P. Police Regulations, Regulation 270**: [(1) Every order of punishment of exoneration, whether original or appellate shall be liable to revision suo-motu by an authority superior to the authority making the order].
>
> (2) Every appellate order by a final appellate authority shall be liable to revision by such final appellate authority, on application made in that behalf by the person against whom the order has been passed.
>
> Explanation.- For the purposes of this clause, the expression "final appellate authority" means the final authority empowered to hear an appeal under Police Regulation 262.
>
> (3) The provisions of Regulations 266, 267, 268 and 271 shall, as nearly as may be, apply to an application for revision.
>
> (4) The revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case:
>
> Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard.]"

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16. Regulation 270 contemplates suo-motu revision by the authority superior to the authority making the order. Thus, it is clear that the order passed by the respondent no. 2 cannot be taken in revision suo-motu by him but any authority superior to him, may be the State Government. Thus, exercise of power by respondent no. 2 under Regulation 270 is beyond his jurisdiction. Clause (4) of Regulation 270 further makes it clear that revising authority may vary or enhance the punishment imposed after issue of notice to the party interested and opportunity given to him for being heard. In the present matter, neither has been done. Thus, the order impugned dated 17.03.2004 is bad as being without jurisdiction. The same is accordingly quashed and set aside. The earlier order dated 22.11.2002 (Annexure P/7) passed by the respondent no. 2, the Director General of Police is confirmed.

17. As a result, and for the reasons stated hereinabove, this petition is allowed and the petitioner is entitled to all the consequential benefits flowing from this order. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit